

COMPETITION COMMISSION FREQUENTLY ASKED QUESTIONS

ABOUT THE COMPETITION COMMISSION

a) What is the Competition Commission?

The Competition Commission is a public body established by the Competition Act 1998. It replaced the Monopolies and Mergers Commission (MMC) on 1 April 1999.

b) What is the role of the Commission?

The Commission has two functions. It has taken on the former MMC role and will also hear appeals against decisions made under the prohibition provisions of the new Competition Act 1998.

c) What was the role of the MMC?

The MMC's role was to investigate and report on matters referred to it by the Director General of Fair Trading (DGFT), the Secretary of State for Trade and Industry and the utility regulators (for water, gas, electricity etc). The MMC could not initiate its own inquiries. The matters which could be referred for investigation included monopolies, mergers and regulatory disputes. In almost all cases, the MMC was asked to decide whether the matter referred was against the public interest.

d) What are the prohibition provisions of the Competition Act?

The prohibitions are modelled on EC competition law. Essentially, there will be a prohibition on agreements or concerted practices which prevent, restrict or distort competition in the UK. However, the DGFT and the utility regulators will be able to grant exemptions in individual cases and the Secretary of State will be able to grant exemptions of general application. There will also be a prohibition on conduct which amounts to abuse of a dominant position in the UK.

e) When will the prohibitions take effect and who will enforce them?

The prohibitions will take effect on 1 March 2000 and the DGFT and the utility regulators will enforce them. If they find that a company has breached a prohibition they will be able, amongst other things, to require it to pay a penalty of up to 10 per cent of its UK turnover.

f) Who can appeal to the Competition Commission and against what can they appeal?

An appeal can be made to the Commission against certain decisions made under the prohibition provisions. While the detailed provisions are complex, they essentially include appeals against decisions on whether a prohibition has been breached, the amount of a penalty and whether an individual exemption should be granted or cancelled. In most

cases, an appeal can be made not only by the party directly affected by the decision but also by anyone with a sufficient interest, such as competitors and customers.

g) How is the Commission structured?

The Commission comprises members and staff, headed by a Chairman. A new President of the Appeal Tribunals, who is also a member of the Commission, is responsible for the Commission's appeal functions. Members are appointed by the Secretary of State following an open competition. They are appointed for their diversity of background, individual experience and ability, not as representatives of particular organisations, interests or political parties.

The Commission will comprise an appeals panel, a reporting panel, and specialist panels. Members of the appeals panel will hear appeals against prohibition decisions; members of the reporting panel will conduct inquiries into merger, monopoly and regulatory references; and specialist panel members will assist in some of the regulatory inquiries. A member can be appointed to all three panels. In addition, the Secretary of State may appoint additional members for individual newspaper references.

Commission staff include economists, accountants, industrial advisers, lawyers and administrators.

h) How will the appeal tribunals and inquiry groups operate?

The President of the Appeal Tribunals will appoint members of the appeals panel to tribunals. Each tribunal will comprise a legally qualified chairman and two other members. The procedures for handling appeals will be the subject of a consultation exercise to be conducted later this year by the Department of Trade and Industry.

The Commission Chairman will appoint a group of members for individual reporting inquiries. A group will typically comprise five members. Inquiries by the reporting panel of the Competition Commission will essentially adopt the working procedures of the MMC. Merger inquiries will usually take three months; others from six months to a year.

i) What happens at the end of an appeal?

An appeal tribunals may uphold or quash the decision or fine against which the appeal had been made, may vary them or, in some circumstances, refer the matter back to the DGFT or the sectoral regulator concerned.

j) What happens at the end of a reporting panel inquiry?

The Commission submits a report, to the Secretary of State or the regulator, which sets out the background to the inquiry, a detailed analysis of the industry, and fully reasoned conclusions and recommendations. The consequence of a Commission report will depend on the legislation under which the reference was made. If the Commission decides that a matter does not operate against the public interest, then that decision is normally final. If, however, the Commission finds that a matter is against the public interest, its recommendations are, in most cases, not binding on the Secretary of State or regulator.